



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 7, 1988

Mr. J. A. Lynaugh
Director
Texas Department of Corrections
P. O. Box 99
Huntsville, Texas 77340

LO-88-67

Dear Mr. Lynaugh:

You ask several questions about the authority of the prison industries division of the Department of Corrections to enter into agreements with a private company.

Article 6203c-3, V.T.C.S., creates the prison industries division and states that its purpose is to provide adequate employment, vocational training, and development and expansion of public and private prison industries. V.T.C.S. art. 6203c-3, §§ 2 and 3. Section 5 of article 6203c-3 provides:

(a) The director [of the Department of Corrections] shall use inmate labor in the prison industries program to the greatest extent feasible and shall develop and expand the prison industries program by pursuing arrangements with business and industry for the use of inmate labor.

(b) The director may employ other persons as necessary to administer and supervise the prison industries program, or to instruct the inmates who participate in the program in the profitable and efficient operation of the activities authorized under the program.

(c) The board may develop and administer an incentive pay scale for prisoners incarcerated in the Texas Department of Corrections who participate in the prison industries program. The program may be financed through contributions donated for

this purpose by private business enterprises or by private industries contracting with the Texas Department of Corrections. The department shall apportion pay earned by an inmate under this article to the following persons and entities, in amounts determined at the discretion of the department:

(1) persons to whom the inmate has been ordered by a court to pay restitution;

(2) the inmate's family and dependents;

(3) the state, as reimbursement for the cost of the inmate's confinement;

(4) the compensation to victims of crime fund, created by Section 14, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes); and

(5) the inmate's trust fund.

Section 7 of article 6203c-3 provides:

In order to encourage the development and expansion of the prison industries program, the division may enter any necessary contracts related to the prison industries program. With the approval of the board, the division may enter contracts with private businesses to conduct programs on or off property operated by the department.

The contract you have submitted to us is a proposed partnership agreement between a private business and the prison industries division of the Department of Corrections. Although article 6203c-3 authorizes the prison industries division of the department of corrections to enter into contracts with private businesses, we find no authorization for the type of contract you have submitted to us. Article 6203c-3 authorizes the division to contract with private businesses for the employment and training of inmates. It does not authorize the division to enter into a partnership in which it would share profits and losses. If the legislature had intended to authorize the division to enter into that type of agreement, we think it would have made its intention very clear. Furthermore, we think that article III, section 51, of the Texas Constitution would prohibit the legislature from authorizing a state agency to enter

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into a traditional partnership. See art. 6132b, § 15 (all partners are liable for all partnership debts).

Because we conclude that the prison industries division is without authority to enter into the type of contract you submitted to us, we do not address your questions about the validity of specific provisions of the contract.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

APPROVED: Rick Gilpin

SW/bc

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